IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE A.J. SADASHIVA

WRIT PETITION No. 30078/1996

BETWEEN:

Sri B.N.Siddalingappa, s/o Gundenahalli Nanjappa, aged 75 yrs., r/a No.179, Halage Vaderahalli (Adaversha Farm), Kengeri Hobli, Bangalore South Taluk.

.. Petitioner

(By Sri V.Lakshminarayana, Adv.,)

AND:

1. State of Karnataka by its Secretary to Govt., Housing and Urban Development Dept., M.S.Bldg., Bangalore-1.

2. The Bangalore Development Authority, Kumara Park West, Sankey Road, Bangalore, by its Commissioner.

3. The Special Land Acquisition Officer for Banashankari V Stage, B.D.A. Building, 'A' Block, 2nd Floor, B.D.A. Office,Sankey Road, Bangalore.

.. Respondents

(By Sri K.H.Jagadish, GA, for R1; Smt.Shobha Patil, Adv., for R2)

This Writ Petition filed under Articles 226 and 227 of the Constitution of India, praying to quash the preliminary notification vide Ann.L dated Nil and the final notification dt. 9.5.94 vide Ann.N by the reppondents and etc.,

This Writ Petition coming on for preliminary hearing this day, the Court made the following :-

O R D E R

Though this petition is listed for preliminary hearing, the same is heard on merits and disposed of by this order, with the consent of the learned Counsel appearing on both the sides.

2. The notifications dated April 13, 1989 and May 9, 1994 issued under sub-section (1) of section 17 and sub-section(1) of section 19 of the Bangalore Development Authority Act, 1976, are sought to be quashed by the petitioner in this petition filed under Articles 226 and 227 of the Constitution of India. The petitioner has also prayed for a writ in the nature of mandamus directing the respondents to denotify the lands in question in accordance with the Government Order dated 1.1.87.

3. The petitioner assails the notification on more than one ground including that the declaration is unsustainable for having been made in violation of sub-section (3) of section 18 of the Act. It is contended that, for want of sanction of scheme by the Government, the declaration is without authority of law. Smt.Shobha Patil, the learned Counsel appearing for respondents 2 and 3 admits that as on the date of declaration there was no sanction. Subsequent to the date of declaration the State Government accorded post-factual sanction and such sanction since relates back to the report, the declaration is valid and tenable.

4. In view of this petition could be disposed of on the short ground whether the declaration is sustainable even without the sanction as on the date of declaration, I do not think that it is necessary for me to advert to the other contentions raised by the petitioner.

5. This Court in a similar circumstance in R.KRISHNAPPA

& ORS., Vs. STATE OF KARNATAKA & ORS., ILR 1997 Kar 907 has held that, the sanction prescribed under sub-section (3) of section 18 of the Act is a condition precedent to be satisfied and no declaration shall be issued in the absence of any sanction of the scheme by the Government. The said condition was again followed in more than one decision. Smt.Shobha Patil, the learned Counsel appearing for respondents-2 and 3 submitted that appeals filed against the aforesaid decisions are pending consideration. It is also material to notice that pursuant to the aforesaid decision the Bangalore Development Authority has issued fresh declarations in respect of the other schemes after securing the sanction from the Government.

6. In this view of the matter, following the decision of this Court in Krishnappa and for the very reasons recorded therein, this petition is allowed. The declaration dated 9.5.1994 issued by the first respondent as per Annexure-N is hereby quashed in so far as it relates to Sy.No.179 situated in Halage Voderahalli Village belonging to the

petitioner, leaving liberty to the respondents to take such steps as allowed in law to acquire the land again if they so desire. Liberty is also reserved to the petitioner to question the validity of the declaration if such a declaration had already been made by the Government after securing the sanction.

7. All other questions are kept open.

8. In the circumstances of the case, there is no order as to costs.

Sd/-
JUDGE

HIGH COURT OF KARNATAKA
BANGALORE

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